



October 18, 2001

Ms. Sue Ann Gregory
Assistant Criminal District Attorney
County of Bexar
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2001-4722

Dear Ms. Gregory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153547.

The Bexar County Planning and Research Management Department (the "department") received a request for a copy of the videotape taken of a specified former employee of the Bexar County Sheriff's Office. You claim that the requested videotape is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your exceptions and reviewed the submitted videotape.¹

Pursuant to section 552.301(b) of the Government Code, a governmental body must ask this office for a decision and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. The department received the request on July 30, 2001 and, therefore, had until August 13, 2001 to request a decision from this office. Because the request for a decision was post-marked on August 14, you failed to request a decision as required by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records

¹We note that the videotape focuses on three different individuals during different time periods. Because only the portion of the tape dealing with the specified former employee is responsive to the request, we will only address the first portion of the tape in this ruling.

Decision No. 319 (1982). You argue that the submitted videotape is excepted under sections 552.103 and 552.108 of the Government Code. Sections 552.103 and 552.108 are discretionary exceptions and do not provide a compelling reason to overcome the presumption of openness in this instance. *See, e.g.,* Open Records Decision Nos. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); *But see* Open Records Decision No. 586 (1991) (stating that need of law enforcement agency, other than one that received written request, may constitute compelling reason to overcome presumption that information is public). Thus, you may not withhold the submitted videotape under sections 552.103 or 552.108. You also claim section 552.101 of the Government Code which provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address your assertion under section 552.101 of the Government Code.

You claim that the submitted videotape is excepted under section 552.101 in conjunction with section 402.092 of the Labor Code. Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, including information made confidential by statute. Section 402.092 (a) of the Labor Code provides as follows:

(a) Information maintained in the investigation files of the *commission* is confidential and may not be disclosed except:

- (1) in a criminal proceeding;
- (2) in a hearing conducted by the commission;
- (3) on a judicial determination of good cause;
- (4) to a governmental agency, political subdivision, or regulatory body if disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States.

Labor Code § 402.092(a) (emphasis added). This provision makes confidential information in the files of the Texas Workers' Compensation Commission (the "commission"). *See* Labor Code § 401.011(8) (providing definition of "commission"). You contend that the information the city gathers and maintains in its workers compensation investigation should be confidential under section 402.092 of the Labor Code. We disagree. Section 402.092 only applies to the commission's records. Thus, we conclude that section 402.092 of the Labor Code is not applicable to the department and, therefore, you may not withhold the submitted videotape under section 552.101 in conjunction with section 402.092 of the Labor Code.

The submitted videotape, however, reveals the former employee's address. Section 552.117(2) of the Government Code excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code. Please note that section 552.117(2) only applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Thus, if the former employee is no longer a peace officer, the department must withhold the address only if the employee made an election under section 552.024 to withhold his address prior to the date of the request. See Gov't Code § 552.117(1).

Further, pursuant to section 552.023 of the Government Code, a person's authorized representative has a special right of access beyond the right of the general public to information that is protected from public disclosure by laws intended to protect that person's privacy interests. Thus, if the requestor is the former employee's attorney, the requestor has a special right of access to the employee's address and you may not withhold this information under section 552.117 of the Government Code. If the requestor has no special right of access, you must edit the videotape to redact the portions which reveal the employee's address under section 552.117(2) if the former employee is still a "peace officer" or under section 552.117(1) if he made a proper election under section 552.024 of the Government Code. Otherwise, you may not withhold the address under section 552.117 of the Government Code.

Further, section 552.119 of the Government Code excepts from public disclosure a photograph of a peace officer as defined by article 2.12 of the Code of Criminal Procedure that, if released, would endanger the life or physical safety of the officer unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. This office has construed section 552.119 to require withholding of a photograph of a peace officer, absent one of the three above-stated exceptions and absent the written consent of the officer. Open Records Decision No. 502 (1988). Therefore, if the individual on the tape is a "peace officer," you must edit the tape to remove or conceal the peace officer's image pursuant to section 552.119 of the Government Code. If the former employee is no longer a "peace officer" or provides a written consent, then you may not withhold the officer's image under section 552.119 of the Government Code.

The submitted videotape also reveals several license plate numbers which are excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must edit the videotape to redact the license plate numbers that belong to other individuals and the former employee's license

plate number under section 552.130 if the requestor is not the authorized representative of the former employee. However, if the requestor is the attorney for the former employee, then the requestor has a special right of access to the former employee's license plate numbers and you may not withhold the former employee's license plate numbers under section 552.130 of the Government Code. Gov't Code § 552.023.

In conclusion, you must release the submitted videotape, but you must redact the former employee's address under section 552.117(2) and photograph under section 552.119 if the former employee is currently a "peace officer." If the former employee is no longer a "peace officer," you must only withhold the address under section 552.117(1) if the employee made a timely section 552.024 election and you must release the former employee's photograph. You must also release the photograph if the former employee provides written consent for its release. You must also release the address and the former employee's license plate numbers if the requestor is the former employee's authorized representative. You must redact the remaining license plate numbers from the videotape under section 552.130 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

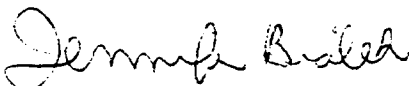
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153547

Enc: Submitted videotape

c: Mr. Hao Le
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(w/o enclosure)